

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-184321

DATE: July 14, 1976

MATTER OF: Dyneteria, Inc. (reconsideration)

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DIGEST:

1. GAO sees no distinction between claim of mistake in bid asserted by counsel for claimant and one asserted by corporate officer of claimant since both are agents for corporation and claim of error asserted by either is asserted on behalf of corporation.
2. Even recognizing that estimates for subitems 4(a)(4) and 4(b)(3) were, unlike other subitems, to be bid on per pickup basis, in view of earlier decision that from face of bid intended unit prices were \$10.64 and \$10.44 for all 4(a) and 4(b) subitems due to clerical error in multiplying intended unit prices by 12, and also 1,100 percent disparity between unit prices for 4(a)(4) and 4(b)(3) and Government estimate, contracting officer could have considered subsequently claimed error of unit price increase for 4(a)(4) and 4(b)(3) by factor of 12 as apparent clerical mistake.
3. While it is possible that apparently intended unit prices could be other than one-twelfth of those submitted, when pattern of overstating unit prices by factor of 12 and fact that unit and extended prices were almost exactly 12 times Government's estimate are analyzed, it is clear that mistake was clerical and that resolution is apparent from face of bid.
4. Where there is apparent clerical mistake, the intended bid usually is determined from face of bid. However, where worksheets furnished to verify bid are in possession of Government and are plainly inconsistent with what seems intended from face of bid, they cannot be ignored when to do so would usurp otherwise low bidder from its standing.
5. Not proper to make award to bidder where it appears that, if total prices had been divided by correct number of pickups per year in calculating unit prices on worksheets, bidder would not be low, and it is also

possible that bidder overestimated total prices based on mistake as to number of pickups; however, it is not ascertainable from worksheets that bidder would be low if error had not been made.

In Worldwide Services, Inc., B-184321, February 18, 1976, 76-1 CPD 108, we held that Worldwide was the apparent low bidder on invitation for bids (IFB) No. F01602-75-09525 and its bid should not have been rejected by the Air Force. Accordingly, we recommended that, if Worldwide was found to be a responsible bidder, the contract awarded to Dyneteria be terminated for the convenience of the Government and the remaining portion of the contract be awarded to Worldwide.

We stated that the IFB contemplated the evaluation for the award of the contract on an annual basis for all items including 4(a) and 4(b). In this regard, we stated:

"* * * An examination of the aggregate figures in Worldwide's bid indicates that it multiplied its unit prices by the estimated number of stations per month to arrive at its total price for each subitem, i.e.:

<u>"Item 4(a)</u>	<u>Estimate</u>		<u>Pickup station per month</u>	<u>Amount</u>
(1)	32	x	\$127.76	= \$ 4,088.32
(2)	272	x	127.76	= 34,750.72
(3)	133	x	127.76	= 16,992.08
(4)	150	x	127.76	= <u>19,164.00</u>
				\$74,995.12
 <u>Item 4(b)</u>				
(1)	304	x	125.36	= \$38,109.44
(2)	133	x	125.36	= 16,672.88
(3)	150	x	125.36	= <u>18,804.00</u>
				\$73,586.32"

After further analysis recited in the decision, we concluded that upon Worldwide's verification that its extended prices for items 4(a) and 4(b) were actually intended to be annual prices, the award could have been made to it as low bidder. We said that Worldwide had made a clerical mistake in annualizing its unit price and that such an error could be corrected upon verification from the bidder. Armed Services Procurement Regulation (ASPR) § 2-406.2 (1974 ed.).

Dyneteria does not question the fact that Worldwide's extended prices were annual prices. However, it does argue that it is, in fact, the low bidder on the basis that by mailgram of June 16, 1975, it informed the contracting officer of a mistake in its bid with regard to subitems 4(a)(4) and 4(b)(3) which, when subsequently corrected, resulted in a lowering of its price. Dyneteria's mailgram stated:

"* * * We wish to call attention to Dyneteria's bid schedule exhibit 4A item 4 and 4B, item 3. Both were extended incorrectly. Unit prices are correct. Extended prices should read \$750. Correcting extension errors will result in a reduction of Dyneteria's price for first optional total from 960,098.65 to 951,848.65. Correcting the total for the alternate bid number 2 [i.e., option including item 4(b)] will reduce the bid price from 956,018.65 to 947,768.65.
* * *

This fact, Dyneteria states, brings its discounted prices down to:

with 4(a) - \$937,570.92
with 4(b) - 933,552.12

In this regard, Dyneteria, while not directly questioning our conclusion that Worldwide erroneously annualized its unit prices for items 4(a)1-3 and 4(b)1 and 2, does indicate that our original decision was in error in that we erroneously assumed that items 4(a)(4) and 4(b)(3) were to be bid on the same basis as items 4(a)1-3 and 4(b)1 and 2. That is, Dyneteria points out that while 4(a)1-3 and 4(b)1 and 2 sought unit prices on a "pickup per station per month basis," items 4(a)(4) and 4(b)(3) were to be bid on a "per pickup basis." Thus, Dyneteria argues that Worldwide's prices for items 4(a)(4) and 4(b)(3) were erroneously corrected both in the Air Force's and GAO's analyses in that Worldwide, unlike Dyneteria, never sought correction in this regard.

By letter of February 27, 1976, counsel for Worldwide also claims a similar additional error in that Worldwide erroneously increased both its unit and extended prices for items 4(a)(4) and 4(b)(3) by a factor of 12. Dyneteria attempts to draw a distinction between a mistake asserted by counsel and one asserted by a corporate officer. We see no distinction, since both outside counsel and corporate officers are agents for the corporation and a claim of error asserted by either is asserted on behalf of the corporation.

Page 3 of Worldwide's worksheets, which has been made available to Dyneteria, indicates the following for the subject items:

"[Item]"	Total Price	Quantity	Extension	Bid Unit Price	Units	Total Bid Price
4a	\$74,995.12	587 x 12 = 7,044	10.64 ⁶⁶ x 12 = 127.75 ⁹²	\$127.76	32	\$ 4,088.32
				127.76	272	34,750.72
				127.76	133	16,992.08
				127.76	150	19,164.00
						<u>\$74,995.12</u>
4b	\$73,586.32	587 x 12 = 7,044	10.44 ⁶⁶ x 12 = 125.35 ⁹²	\$125.36	304	\$38,109.44
				125.36	133	16,672.88
				125.36	150	18,804.00
						<u>\$73,586.32"</u>

As can be seen from the worksheet, Worldwide assumed that items 4(a)(4) and 4(b)(3) would be computed on the same basis, i.e., that 150 represented the number of pickups per month rather than per year. This assumption was not unreasonable, since although the IFB did indicate that bidders should submit a "per pickup" unit price for items 4(a)(4) and 4(b)(3), the fact remains that in the estimates the IFB stated a single total for what now appears to be monthly estimates for items 4(a)1-3 and 4(b)1 and 2 and an annual estimate for 4(a)(4) and 4(b)(3). The single total in the IFB was the proximate cause of Dyneteria's assumption (corrected by its June 16 mailgram) that 150 was a monthly figure as well as a similar assumption by Worldwide (see worksheet extract, supra) which it did not express until later.

With regard to items 4(a)(4) and 4(b)(3), we note that the purchase request provided for 150 pickups for the year at an estimated cost of \$11 per pickup for a total annual estimated cost of \$1,600. When the IFB is read in conjunction with the purchase request, it

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appears that the Air Force was seeking bids on items 4(a)(4) and 4(b)(3) on the following basis:

$$\text{\$ unit bid price} \times 150 \text{ pickups per year} = \frac{\text{annual price}}{\text{annual price}}$$

The bids initially received indicated the following prices:

	<u>Dyneteria</u>		<u>Worldwide</u>	
	<u>Unit</u>	<u>Total</u>	<u>Unit</u>	<u>Total</u>
4(a)(4) -	\$5	\$9,000	\$127.76	\$19,164
4(b)(3) -	5	9,000	125.36	18,804

The total prices ranged from over five times the estimated total to almost 12 times the estimated total. However, since Dyneteria was allowed to correct its mistake, its extended prices are now:

for 4(a)(4) - \$750
for 4(b)(3) - 750

If Worldwide were similarly allowed to correct, its prices would be:

4(a)(4) - \$1,596.90
4(b)(3) - 1,566.90

Worldwide would remain low bidder on a total price basis.

In finding that Worldwide was the low bidder on the basis of the bids as submitted, we held in our original decision that it could be determined from the face of Worldwide's bid that it had made a clerical error in multiplying each of its intended unit prices by 12 in stating a unit price in the bid. In short, we found that, from the face of the bid, Worldwide's intended unit prices were \$10.64 and \$10.44 for items 4(a) and 4(b), respectively. In view of this fact, and also the wide disparity in Worldwide's unit prices for 4(a)(4) and 4(b)(3) as compared to the Government's estimate (\$127.76 and \$125.36 vs. \$11), a difference of nearly 1,100 percent, we believe that, with regard to Worldwide's claim of an erroneous unit price increase by a factor of 12, the contracting officer could have considered it an apparent clerical mistake under ASPR § 2-406.2, supra, and determined from the face of the bid that the intended unit price was one-twelfth of that stated and that the extended prices were \$1,596.90 and \$1,566.90,

respectively. Pursuant to ASPR § 2-406.2 verification of this fact would be required.

The Air Force, however, states that:

"* * * We can find no evidence on the face of Worldwide's bid that the unit price was 'annualized.' It is obvious from a comparison of the bid prices and prices paid for item 4(b)(3) under previous contracts that Worldwide committed an error in its unit price; however, there is no evidence on the face of the bid to indicate the intended bid. While the bid may have been annualized, it is also possible that a decimal may have been misplaced, i.e., \$12.532 in lieu of \$125.32. In our view the apparent error may not properly be treated as a clerical mistake but should instead be considered under 'other' mistakes pursuant to ASPR 2-406.3. Where, as it is here alleged, correction of a mistake in bid would displace another bidder, ASPR 2-406.3(a)(3) requires that a determination to correct shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. Based on the foregoing, we are of the opinion that Worldwide's intended bid is not ascertainable from the invitation and bid itself. Accordingly, it is our view that a determination to allow Worldwide to correct its bid would be improper."

We do not agree. While it is possible that Worldwide's apparently intended unit prices for items 4(a)(4) and 4(b)(3) could be other than one-twelfth of those which it submitted, when all factors are analyzed, i.e., (1) Worldwide's pattern of overstating its unit prices by a factor of 12, and (2) the fact that both Worldwide's unit and extended prices were almost exactly 12 times the Government's own estimate, it is clear that the mistake was a clerical one and that resolution is apparent from the face of the bid itself.

Dyneteria argues that Worldwide never intended to bid either \$10.44 per unit for any of the items in 4(b) or \$10.64 for any of the items in 4(a) irrespective of what might be "apparent" from the face of the bid. In essence, the argument is made that what might appear to be a clerical error in calculation, and thus correctable under ASPR § 2-406.2, supra, is in fact a more

basic error to be handled in accordance with ASPR § 2-406.3 (1974 ed.). In this regard, Dyneteria indicates that Worldwide essentially backed into the \$10.64 and \$10.44 unit prices and its error was in the calculations which it made in doing so as to the number of pickups per year. Dyneteria states that it is the practice in the industry, in IFB's of the precise type here in question, to initially compute the entire cost of performing the work. Dyneteria notes that although it has not been given access to pages 1 and 2 of Worldwide's worksheets, since column 1 on page 3 of the worksheet indicates total prices for both 4(a) and 4(b), it assumes that this practice was followed in the instant case. As shown in column 2 of page 3 of the worksheets (Quantity), Worldwide multiplied the erroneous total monthly estimate figure of 587 in the IFB by 12 (months) and divided the product (7,044) into the total prices stated in column 1. This resulted in the unit prices of \$10.64 and \$10.44, which were then multiplied by 12 to reach annual unit prices of \$127.76 and \$125.36. When these amounts are multiplied by the respective number of units set forth in the IFB, the extended prices for each subitem set forth in Worldwide's bid are obtained.

In light of Dyneteria's argument, we have reviewed pages 1 and 2 of Worldwide's worksheets and agree that Worldwide apparently computed its bid in the manner alleged. Therefore, if we assume that Worldwide, in determining its costs, etc., for items 4(a) and 4(b), based those costs on a proper reading of the Government's estimates, i.e., 5,394 pickups per year (a total of 437 per month for 12 months plus another 150 per year) rather than 7,044, then there is no error in the estimated total price and the only error that would have been made in arriving at the unit prices was the division as stated on page 3 of the worksheets of the total price by 7,044 pickups per year rather than 5,394.

If this error were corrected, then the correct computation based on the most favorable argument espoused by counsel for Worldwide should have been as follows:

	<u>Total</u> <u>Price</u>	<u>Quantity</u>	<u>Extension</u>	<u>Units</u>
4(a)	\$74,995.12	5,394	\$13.903433	32 x 12 = \$ 5,338.92
				272 x 12 = 45,380.80
				133 x 12 = 22,189.88
				150 ---- = <u>2,085.11</u>
				\$74,995.11

Based on this computation, Worldwide's discounted total bid prices would have been \$939,670.08 for 4(a) and \$938,262.69 for 4(b) or higher than Dyneteria's corrected prices (\$937,570.92 and \$933,552.12). Therefore, if our initial assumption as to the existence of only this calculation error is correct, even then Dyneteria is the low bidder, since it is clear from the worksheets that, if a proper calculation had been made, the unit prices on the face of the bid would have been different.

Where there is an apparent clerical mistake, the intended bid usually is determined from the face of the bid. However, where the worksheets furnished to verify the bid are in the possession of the Government and are plainly inconsistent with what seems intended from the face of the bid, they cannot be ignored when to do so would usurp the otherwise low bidder from its standing.

We recognize that there is another possible interpretation of Worldwide's worksheets. In reaching its unit prices, Worldwide may not only have misdivided the total price by an inflated total number of units, but may have also erroneously assumed throughout its computation of costs, etc., on page 1 of the worksheets, that 7,044 pickups would be required rather than the correct figure of 5,394. This might have caused Worldwide to overestimate its costs, etc., and total prices from which the unit prices for items 4(a) and 4(b) were derived. However, it is not ascertainable from the worksheets that Worldwide would be the low bidder if an error had not been made in the preparation of the bid.

For the foregoing reasons, we believe that an award to Worldwide would not be proper and that Worldwide could properly have been allowed only the opportunity to withdraw its bid. Accordingly, the decision of February 18 is reversed and the recommendation contained therein that the contract awarded to Dyneteria be terminated for the convenience of the Government is withdrawn.

In the course of our review, our Office requested and was furnished Dyneteria's worksheets. As to the question regarding the manner in which Dyneteria computed its bid, our examination did not reveal (1) that Dyneteria acted under the same misunderstanding as Worldwide as to the number of pickups or (2) that it intended to submit any prices other than the extended prices

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initially stated for 4(a) and 4(b). In any event, we have been informally advised by the Air Force that it will not exercise the option under the contract awarded to Dyneteria and that it has issued a new solicitation for the services for the forthcoming term.

Since our initial decision contained a recommendation for corrective action, copies were sent to each of the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970). Each of those committees has been apprised of our withdrawal of the recommendation.

R. F. Keller
Deputy Comptroller General
of the United States